

ESTTA Tracking number: **ESTTA355290**

Filing date: **06/28/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Retail Royalty Company
Granted to Date of previous extension	06/27/2010
Address	101 Convention Center Drive Las Vegas, NV 89109 UNITED STATES

Attorney information	Lauren T. Estrin Kilpatrick Stockton LLP 1100 Peachtree Street NE Suite 2800 Atlanta, GA 30309 UNITED STATES lestrin@kilpatrickstockton.com, kgarris@kilpatrickstockton.com, tadmin@kilpatrickstockton.com, abounds@kilpatrickstockton.com
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Applicant Information

Application No	77792880	Publication date	12/29/2009
Opposition Filing Date	06/28/2010	Opposition Period Ends	06/27/2010
Applicant	DeGuzman, Rex M. 11711 Champions Grove Lane Houston, TX 77066 UNITED STATES		

Goods/Services Affected by Opposition


Class 025. All goods and services in the class are opposed, namely: Jeans; Shorts; T-shirts
Class 034. All goods and services in the class are opposed, namely: Electronic cigarettes for use as an alternative to traditional cigarettes


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	3378629	Application Date	04/21/2006
Registration Date	02/05/2008	Foreign Priority	NONE

		Date	
Word Mark	LIVE YOUR LIFE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2002/06/00 First Use In Commerce: 2002/06/00 Wearing apparel, clothing, and clothing accessories, namely, blouses, bottoms, dresses, tops, jackets, jeans, lingerie, loungewear, pants, shirts, shorts, skirts, sleep wear, sweaters, trousers, undergarments, swimwear, footwear, and headwear		

U.S. Registration No.	3436688	Application Date	11/01/2004
Registration Date	05/27/2008	Foreign Priority Date	NONE
Word Mark	LIVE YOUR LIFE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2002/02/00 First Use In Commerce: 2002/02/00 Retail store services, e-commerce, catalog, and telephone order services, all in the field of clothing, clothing accessories, footwear, headwear, backpacks, laundry bags, athletic bags, cosmetic bags sold empty, purses, wallets, duffle bags, perfume and fragrances, cologne, cosmetics, personal care products, sunglasses, candles, toys, wristwatches, jewelry, prerecorded music on CDs, and other electronic media, and gift wrapping paper		

U.S. Registration No.	3628970	Application Date	08/07/2006
Registration Date	05/26/2009	Foreign Priority Date	NONE
Word Mark	LIVE YOUR LIFE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2006/10/00 First Use In Commerce: 2006/10/00 Fragrances, namely, perfume and cologne Class 014. First use: First Use: 2007/10/00 First Use In Commerce: 2007/10/00 Jewelry, namely, jewelry Class 018. First use: First Use: 2006/04/18 First Use In Commerce: 2006/04/18 Tote bags

U.S. Application No.	78946466	Application Date	08/07/2006
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	LIVE YOUR LIFE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: Personal care products and cosmetics, namely, shaving balm, shaving cream, shaving gel, shaving lotion, shower gel, body powder, bubble bath, deodorant soap Class 018. First use: Backpacks, beach bags, book bags, gym bags, purses, waist packs, rucksacks, wallets, credit card cases; toiletry cases sold empty; umbrellas		

Attachments	78866964#TMSN.jpeg (1 page)(bytes) 76978813#TMSN.gif (1 page)(bytes) 78980499#TMSN.jpeg (1 page)(bytes) 78946466#TMSN.jpeg (1 page)(bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Lauren T. Estrin/
Name	Lauren T. Estrin
Date	06/28/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

RETAIL ROYALTY COMPANY,)	
)	In re Serial No. 77/792880
Opposer,)	
)	Mark: LIVE LIVE
v.)	
)	Opposition No. _____
REX M. DEGUZMAN,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer is Retail Royalty Company, a Nevada corporation with an address at 101 Convention Center Drive, Las Vegas, Nevada 89109 (“Opposer”). Opposer believes that it will be damaged by the registration of Application Serial No. 77/792,880 for LIVE LIVE (the “Application”) in International Class 25 and hereby opposes the same pursuant to 15 U.S.C. § 1063.

As grounds for its opposition, Opposer alleges as follows:

1. Opposer, together with its affiliated companies American Eagle Outfitters, Inc. and AEO Management Co. (collectively, “AEO”), is a leading retailer that designs, markets, and sells clothing, footwear, accessories, and other products under a variety of marks, including the mark LIVE YOUR LIFE.

2. AEO has continuously used the LIVE YOUR LIFE mark in connection with its clothing, accessories, and related products and services, since at least as early as 2002. The goods and services AEO offers under the LIVE YOUR LIFE mark include, but are not limited to, jeans, shorts, and t-shirts, totebags, fragrances, and retail store services.

3. AEO has also used the LIVE YOUR LIFE mark to promote its retail store services in nearly all of its over 900 American Eagle Outfitters stores throughout the United States and through its online retail store website located at www.ae.com.

4. AEO has spent substantial sums of money to promote the goods and services offered under the LIVE YOUR LIFE mark. Based on AEO's extensive use and promotion of the LIVE YOUR LIFE mark, the LIVE YOUR LIFE mark has acquired a high degree of recognition and distinctiveness as a symbol of the high quality products and services offered by AEO prior to the filing date of Applicant's application. The public and trade are familiar with and identify the LIVE YOUR LIFE mark with AEO and, by reason of this identification, goods and services associated with the LIVE YOUR LIFE mark are understood by the public and trade to be produced, marketed, and supplied under AEO's authority, or otherwise derived from AEO.

5. In addition to its common law rights, AEO is the owner of the following registrations and application of the LIVE YOUR LIFE mark, all of which are valid and in full force and effect:

Registration/ Application No.	Goods and Services	Date of First Use/ Priority date
3378629	"Wearing apparel, clothing, and clothing accessories, namely, blouses, bottoms, dresses, tops, jackets, jeans, lingerie, loungewear, pants, shirts, shorts, skirts, sleep wear, sweaters, trousers, undergarments, swimwear, footwear, and headwear" in International Class 25	June 2002
3436688	"Retail store services, e-commerce, catalog, and telephone order services, all in the field of clothing, clothing accessories, footwear, headwear, backpacks, laundry bags, athletic bags, cosmetic bags sold empty, purses, wallets, duffle bags, perfume and fragrances, cologne, cosmetics, personal care products, sunglasses, candles, toys, wristwatches, jewelry, prerecorded music on CDs, and other electronic media, and gift wrapping paper," in International Class 35	February 2002

Registration/ Application No.	Goods and Services	Date of First Use/ Priority date
3628970	<p>“Fragrances, namely perfume and cologne,” in International Class 3</p> <p>“Jewelry, namely, jewelry” in International Class 14</p> <p>“Tote bags,” in International Class 18</p>	August 7, 2006
78946466	<p>“Personal care products and cosmetics, namely, shaving balm, shaving cream, shaving gel, shaving lotion, shower gel, body powder, bubble bath, deodorant soap,” in International Class 3</p> <p>“Backpacks, beach bags, book bags, gym bags, purses, waist packs, rucksacks, wallets, credit card cases; toiletry cases sold empty; umbrellas,” in International Class 18</p>	August 7, 2006

6. Notwithstanding AEO’s prior rights in the LIVE YOUR LIFE mark in connection with clothing, accessories, and related goods and services, on July 30, 2009, Rex M. DeGuzman, an individual having a residence at 11711 Champions Grove Lane, Houston, Texas 77066 (“Applicant”) filed an application Serial No. 77/792880 to register the mark LIVE LIVE (“Applicant’s Mark”) on the Principal Register for “jeans, shorts; t-shirts,” in International Class 25 and “electronic cigarettes for use as an alternative to traditional cigarettes” in International Class 34.

16. Based on the similarities of the marks and the goods and services, the relevant public is likely to be confused into believing that Applicant’s goods, as offered under the LIVE LIVE mark, emanate from Opposer, or are authorized, licensed, endorsed, or sponsored by Opposer. Registration of Applicant’s Mark on the Principal Register thus would be inconsistent with Opposer’s prior rights in its well-known LIVE YOUR LIFE mark with consequent injury to Opposer and the public.

7. There is no issue as to priority. Opposer began using its LIVE YOUR LIFE mark in commerce at least as early as 2002, well prior to the July 30, 2009, filing date of the Application, which was filed on an intent-to-use basis.

8. Opposer will be damaged by the registration of Applicant's Mark because it so resembles Opposer's previously used and well-known LIVE YOUR LIFE mark as to be likely, when used on or in connection with the goods identified in the Application, to cause confusion, or to cause mistake, or to deceive in violation of section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

9. Opposer will be further damaged by the registration of Applicant's Mark because the mark is likely to dilute the distinctiveness of the LIVE YOUR LIFE mark by eroding consumers' exclusive identification of these marks with Opposer, and/or by tarnishing and degrading the positive associations and prestigious connotations of these famous marks, and/or by otherwise lessening the capacity of the marks to identify and distinguish Opposer's goods and services in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer requests that that registration of Application Serial No. 77/792,880 be denied in International Class 25 pursuant to 15 U.S.C. §§ 1052(d), 1125(c) and 1063(a).

This 28th day of June 2010.

Respectfully submitted,

KILPATRICK STOCKTON LLP

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***Attorneys for Opposer,
Retail Royalty Company***

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RETAIL ROYALTY COMPANY,)	
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Opposer,)	
)	Mark: LIVE LIVE
v.)	
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REX M. DEGUZMAN,)	
)	
Applicant.)	

CERTIFICATE OF SERVICE

This is to certify that the attached Notice of Opposition has been served upon Applicant and Applicant's counsel of record by depositing a copy in the United States mail as first-class mail, postage pre-paid, addressed as follows:

Karen B. Tripp
Attorney at Law
P.O. BOX 1301
Houston, TX 77251-1301

Rex M. DeGuzman
11711 Champions Grove Lane
Houston, TX 77066

This 28th day of June 2010.

/Lauren T. Estrin/
Lauren T. Estrin